Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1975

No. 75-512

MARY SHAPIRO,

Petitioner-Appellant,

vs.

BOROUGH OF HIGHTSTOWN,

Respondent-Appellee.

PETITION FOR A WRIT OF CERTIORARI

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In The

Supreme Court of the United States

October Term, 1975

No.

MARY SHAPIRO,

Petitioner-Appellant,

vs.

BOROUGH OF HIGHTSTOWN,

Respondent-Appellee.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the order of the Supreme Court of New Jersey rendered in these proceedings on May 6, 1975 which dismissed petitioner's appeal upon motion of the Borough of Hightstown, respondent.

OPINION BELOW

The order of the Supreme Court of New Jersey appears as Attachment 1, appended. The opinion of the Appellate Division of New Jersey appears as Attachment 2, appended.

JURISDICTION

The order of the Supreme Court of New Jersey was filed May 6, 1975. This petition for writ of certiorari was filed more than 90 days from the date aforesaid and there is no order for extension of time to petition. The jurisdiction of the Court is involved under 28 U.S.C. Section 1257(3).

THE QUESTIONS PRESENTED

I. Whether a State Court, in dismissing petitioner's appeal of her motion to dismiss the respondent's complaints and summonses for lack of jurisdiction because of denial of due process and equal treatment of the laws, is a proper federal question for the United States Supreme Court under the Fourteenth Amendment?

A. Whether the petitioner has been denied due process where, under local housing and health ordinances requiring notice and hearing for alleged violations, such notices and hearings are not held, but a trial is held therefore despite petitioner's objection thereto?

B. Whether there is abuse of judicial process for issuance of summonses where there is a lack of jurisdiction therefore where such summonses are arbitrarily issued and therefore void, is a proper federal question for the United States Supreme Court under the Fourteenth Amendment?

II. Whether arrest of petitioner is arbitrary where based upon void summonses when such arrest of a woman in a civil matter is contrary to statute proscribing such arrest?

A. Whether arrest under a bench warrant of petitioner for non-appearance at trial, based on the alleged void summonses, and assurance of attorney of record that adjournment was being arranged which, in fact did occur, and without any disrespect of the Court is released on recognizance, is abuse of judicial process?

B. Whether arbitrary change by respondent from a matter civil to a criminal matter, is a violation of due process and without equal protection of the laws, and is a proper federal question for the United States Supreme Court under the Fourteenth Amendment?

C. Whether no appearance or testimony by arresting officer of petitioner at her trial is within the concept of due process?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Fourteenth Amendment:

> ". . . nor shall any State deprive any person of life, liberty or property without due process of law . . . ."

STATUTES INVOLVED

Revised Statutes of New Jersey 2A:15-40 (proscription of arrest of a woman in a civil action).

RULES INVOLVED

Revised Rules of New Jersey 4:70-1 (collection of a penalty in a civil proceeding); *4:74-3(g)* (imposition of a penalty).

ORDINANCES INVOLVED

Revised General Ordinances of Borough of Hightstown, New Jersey, Sec. 13-1.1 (housing code-establishing standards of safety, sanitary condition and fitness); *13-4* (unfit dwellings); *13-4.1* (requirement of a notice of a hearing for unfit dwelling); *13-4.2* (order for abatement or demolition if unfit dwelling); *13-4.7* (compliance with chapter within standards).

BH:2-9 (abatement of nuisances); *Sec. BH:2-9.1(a)* (notice requirement for abatement of a private nuisance, or unsanitary, unhealthy condition).

STATEMENT OF THE CASE

On August 23, 1973, petitioner was served with two summonses for violations of respondent's housing and health ordinances returnable at the respondent's Municipal Court. Petitioner did not appear because of her reliance in good faith upon prior assurance of her attorney of record that an adjournment was being arranged, and was arrested under a bench warrant and released by the Clerk of the Court upon her recognizance after the Court was informed of the planned adjournment, and the matter was adjourned.

At the trial the petitioner moved to dismiss the summonses for lack of jurisdiction under the Fourteenth Amendment of the

United States Constitution because of the arbitrary acts of the respondent resulting in the deprivation of the petitioner's property rights and liberty, and unequal protection of the law. This motion was denied and after trial petitioner was fined $500 with a stay pending appeal. On appeal to the County Court the motion was again denied, as it was also denied in the Appellate Division (Attachment 2), and the appeal was dismissed in the New Jersey Supreme Court (Attachment 1).

At the trial the respondent's Housing and Health Inspectors who testified, admitted that the premises inspected herein were not "unfit" for habitation and therefore not unhealthy, unsanitary and unsafe under the standard of the respondent's ordinance. No appearance or testimony of the arresting officer took place at the trial. No notice or hearing for the violations were in evidence or actually transpired, as required by the respondent's ordinances and due process.

In addition, the respondent has arbitrarily changed the matter from a civil to a criminal matter, contrary to statute and case law, without consent of the Court or the petitioner, and without due process.

The federal questions under the Fourteenth Amendment of the Constitution of the United States were raised as follows:

1. By motion for dismissal of summons for lack of jurisdiction because of deprivation of property and liberty under the Fourteenth Amendment without due process and equal protection of the laws, denied by the Municipal Court of Hightstown, New Jersey on October 31, 1973.

2. By motion for leave to appeal the interlocutory order of the Municipal Court, denied by Mercer County Court of New Jersey on December 12, 1973.

3. By notice of appeal of judgment of Mercer County Court of New Jersey to the Appellate Division of New Jersey, affirmed by judgment on February 10, 1975.

4. By notice of appeal of judgment of the Appellate Division of New Jersey and by motion in opposition to respondent's motion to dismiss appeal of petitioner in Supreme Court of New Jersey, denied May 6, 1975, and appeal ordered dismissed.

The federal questions were also raised in the record:

1. In the transcript of the trial in the Municipal Court of Hightstown, New Jersey (T2-8 to 17) (due process under the Fourteenth Amendment), and (T47-13 et seq. to T50-14, T54-20); (T54-20) (service under compulsion).

2. In the transcript at the hearing in the Mercer County Court of New Jersey (T2-11 to 16) (due process under the Fourteenth Amendment); (T5-1 to 10) (lack of a hearing); (T21-10 to 22) (due process).

3. In the brief of petitioner to the Appellate Division, State of New Jersey, Point I (due process under the Fourteenth Amendment); Point II (jurisdiction for arrest).

4. In petitioner's motion in opposition to respondent's motion to dismiss appeal in Supreme Court of New Jersey, pp.

1, 2, 3 (lack of due process, arbitrary arrest, lack of required hearings, arbitrary prosecution of a civil matter as a criminal matter).

REASONS FOR GRANTING THE WRIT

I.

The constitutional rights of the petitioner under the Fourteenth Amendment of the United States Constitution are violated when there is a denial of due process, lack of jurisdiction and equal protection of the laws.

No State shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law, the Fourteenth Amendment being a limitation on the State's action in violation of the United States Constitution. *Fallbrook Irrig. Dist. v. Bradley,* 164 U.S. 112, 154-5 (1896). Arbitrary acts in the issuance of summonses are not within the concept of due process under the Fourteenth Amendment. *Chicago etc. R.R. v. Chicago,* 166 U.S. 226, 234 et seq. (1896).

The petitioner was denied due process when, under local housing and health ordinances requiring notice and hearing for alleged violations, such notices were lacking and hearings were not held before issuance of summonses and despite petitioner's objection a trial was held. The respondent's Housing and Health Officers admittedly knew prior to the issuance of the summonses that the premises herein were not "unfit" for habitation and therefore not unhealthy, unsanitary and unsafe under the

standards of the ordinance after numerous inspections. Similarly under the abatement of nuisance ordinance for which a summons was issued no notice thereof was given to the petitioner. It is submitted that these summonses were void, and therefore the Court lacked jurisdiction for their issuance under the due process clause of the Fourteenth Amendment.

II.

The arrest of the petitioner under these summonses which are void is an arbitrary act and their issuance is an abuse of the judicial process, without due process and gives the Court no jurisdiction. The petitioner's arrest under a bench warrant for violation of summonses allegedly void and for non-appearance at the trial therefore lacks jurisdiction.

The petitioner's non-appearance at the trial was due to the assurances of her attorney of record that arrangements for adjournment were being negotiated which adjournment was later granted, without any proof of disrespect for the Court. But the bench warrant was not discharged and petitioner was released on personal recognizance. In New Jersey the arrest of a woman in a civil matter is proscribed and is an infraction on her rights *ab initio;* there must be jurisdiction for the arrest. Despite the statute and cases, the arrest was based upon void summonses and there was no testimony or appearance at the trial by the arresting officer. There was no equal protection of the law for petitioner under the Fourteenth Amendment.

It is submitted that it is not sufficient, as the Appellate Division declared (Attachment 2), that once a summons is issued

the Court has jurisdiction though the matter may be dismissed, whatever the merits of the claim "after a hearing", which was not in conformity with the ordinance. This overlooks the possibility of arbitrarily issued summonses and therefore are void. This is a deprivation of the petitioner's right to liberty under the Fourteenth Amendment as if no due process exists for her.

Similarly, in the same decision, the Court declared:

> "The 'arrest' of the defendant pursuant to a bench warrant duly issued when defendant failed to appear . . . whether proper or improper, does not terminate jurisdiction . . . which otherwise possesses jurisdiction over the subject matter of the complaint and of the person of the defendant acquired by proper service which was admitted in this case."

It is submitted that the bench warrant was not duly issued because of the void summonses. In addition, when the petitioner's agent offered to accept service as authorized by statute he was threatened with obstructing justice and the agent so informed the petitioner within her home whereupon the petitioner, to prevent possible arrest of her agent, came out and received the summonses. This too is service without the protection of due process, being under duress.

Finally, the arbitrary change by the respondent of the matter herein from a civil matter under statute and case law to a criminal matter is a denial of the petitioner's rights under the Fourteenth Amendment.

CONCLUSION

For the reasons stated herein, it is submitted that a writ of certiorari should to review the judgment of dismissal of petitioner's appeal by the Supreme Court of New Jersey.

Dated September 25, 1975

Respectfully submitted,

Leonard A. Coyle
Attorney of Record for Petitioner

Paul Shepard
Attorney for Petitioner

ATTACHMENT 1 — ORDER OF THE SUPREME COURT OF NEW JERSEY

Filed May 9, 1975

SUPREME COURT OF NEW JERSEY
M-740 SEPTEMBER TERM 1974

Borough of Hightstown, a municipal corporation of the State of New Jersey,

Plaintiff-Movant,

vs.

Mary Shapiro,

Defendant-Appellant.

O R D E R

This matter having been duly presented to the Court, it is ORDERED that the motion to dismiss appeal is granted.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 6th day of May, 1975.

s/ Florence R. Peshoe
Clerk

ATTACHMENT 2 — OPINION OF THE APPELLATE DIVISION OF NEW JERSEY

Filed February 10, 1975

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1027-73

BOROUGH OF HIGHTSTOWN,

Plaintiff-Respondent,

v.

MARY SHAPIRO,

Defendant-Appellant.

Argued November 11, 1974 — Decided

Before Judges Michels, Morgan and Kentz

On appeal from the Mercer County Court.

Mr. Paul Shepard argued the cause for appellant (Mr. Richard J. Piepszak, attorney).

Mr. G. Thomas Reynolds, Jr. argued the cause for respondent (Mr. Kester R. Pierson, attorney).

PER CURIAM

Defendant appeals from the final judgment of the County Court of Mercer County affirming the denial by the Municipal Court, Borough of Hightstown, of defendant's pretrial motion to dismiss two summonses served upon the defendant charging her with several violations of the Borough's Building and Health Codes. Defendant also challenges the legality of her arrest pursuant to a bench warrant issued by the Municipal Court when she failed to appear on the date scheduled for the hearing on the violations charged in the complaints served with the summonses. The arrest is asserted by the defendant to be an arbitrary act depriving the Municipal Court of jurisdiction to hear the case and enter the conviction of the offenses charged in one of the complaints.

The defendant Mary Shapiro is the owner of certain premises located in the Borough of Hightstown, County of Mercer, in connection with which a Notice of Violation pursuant to the Housing Code of the Borough of Hightstown was issued. Subsequently, on August 23, 1973, the defendant was served with two summonses for violations set forth in the Notice of Violation. One summons, No. 391, was issued charging violations of provision of the Borough Housing Code; the other summons, No. 500, was issued charging defendant with violations of the Board of Health Ordinances. The defendant did not appear on the return date as set forth in the complaint and a bench warrant was duly issued by the presiding Municipal Court Judge pursuant to which defendant was brought before the court and subsequently released on her own recognizance following a rescheduling of the date of hearing on the violations charged.

Prior to the trial (after which defendant was convicted of Housing Code violations and fined), defendant moved to dismiss

the proceedings on the ground that the court lacked jurisdiction. The court denied the motion. The County Court affirmed this ruling. Defendant appeals to this court.

It is not a simple matter to articulate defendant's contentions because they make little sense. The argument seems to be as follows: The Borough did not attempt to prove a case under the Unfit Dwelling Section of the Housing Code but chose rather to proceed to establish violation of standards set forth in the Housing Code, although defendant was charged with violating of both the Housing Code and the Unfit Dwelling Section thereof. From that, defendant deduces that defendant's dwelling was not unfit, and therefore the complaint and summons had no basis for their issuance and that both are therefore void and, accordingly, the court lacked jurisdiction of the case. Defendant points out that if the premises are held to be unfit, the municipal officials must order eviction of a tenant. In choosing not to proceed under this section and obtain an adjudication of unfitness and evict the tenants, the municipality acted arbitrarily, and the summonses issued were therefore void and the court without jurisdiction. Finally, defendant contends that her arrest in violation of *N.J.S.A.* 2A:15-40, proscribing the arrest of a woman in a civil matter, also served to invalidate the summons and deprive the court of jurisdiction.

Defendant's contentions are patently frivolous. She admits being served with the summonses. She admits she was not in court on the date specified for a hearing although she contends that she was told by her lawyer not to be there. Service of the summonses upon her conferred jurisdiction upon the court to hear the violations charged therein. That jurisdiction continued

whatever the merits of the charges proved to be after a hearing. A court clearly has jurisdiction to decide that no basis exists for the charges made and no citation of authority in support of that proposition is necessary.

The "arrest" of the defendant pursuant to a bench warrant duly issued when defendant failed to appear in court on the scheduled date, whether proper or improper, does not terminate jurisdiction of a court which otherwise possesses jurisdiction over the subject matter of the complaint and of the person of the defendant acquired by proper service which was admitted in this case.

Defendant has not appealed the merits of the conviction. Nonetheless, we have carefully studied the record and conclude that there was a plenitude of evidence fully justifying the conviction of the charges stemming from violations of the Housing Code.

Affirmed.

A TRUE COPY

s/ Elizabeth McLaughlin
Clerk